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WITHDRAWAL SHEET

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Collection Name CULVAHOUSE, ARTHUR B.:FILES

Withdrawer

DLB 9/26/2014

File Folder [IRAN/ARMS TRANSACTION: PETER WALLISON FILES:
PJW NOTES: DEVELOPMENT OF QUESTIONS RELATIVE
TO ISSUES AND CHRONOLOGY

FOIA
S643

Box Number CFOA I132

SYSTEMATIC

187

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
165884	PAPER	MAJOR LEGAL ISSUES - DRAFT	1	ND	B1

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
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11/21/86

With only limited time and even more limited facts, I have developed some questions concerning the chronology. As noted at the end, I have grave doubts about the chronology's overall candor.

1. P.5, 2nd ¶: The President says that he cannot authorize "materiel" (presumably arms) for Iran "at that time" (August 22 or later). Yet, the chronology says (last ¶, p.5) that the Israelis transferred arms in late August -- apparently in contravention of the President's decision. This transfer violates the Arms Export Control Act (AECA), which requires a report to Congress immediately after a violation becomes known. Was the decision by the President not to "expose" the violation taken with legal advice? Was the AG informed? Was Israel warned about this behavior?
2. P.6, 2nd full ¶: In mid-November, North requests CIA help for the Israelis to transfer "oil drilling parts." Is this credible? Why would Israel have to ask for CIA help in transferring a normal commercial cargo?

More important, Shultz's notes indicate that he was told by McFarlane on November 18 that if all the hostages were released the Israelis would deliver Hawk missiles to Iran on November 20. Is this the same transaction that North was assisting, and if so, who is telling the truth?

The chronology indicates (p.6, ¶3) that we did not learn the Hawks were shipped until January. This means of course that the President was not informed in November, when Shultz was told by McFarlane that the Hawks would go to Israel. But if Shultz is correct, either the chronology is grossly wrong or McFarlane was acting without authority. Moreover, if Shultz is correct, the policy from the beginning involved the exchange of arms for hostages.

3. P.6, ¶3: The Israeli shipment was a violation of the AECA at the time it occurred, even though called back in February. There was a legal obligation to report the violation to Congress when it was discovered. Was the President advised of the shipment or of the violation? Was the AG advised? If so, when? If not, why not? Was any action taken against Israel? With respect to the earlier unauthorized shipment (in August) the chronology says the President was advised and decided not to "expose" it. Why was a different course chosen this time?

Since their two violations are likely to be exposed, what will the Israelis say? Do they think they were authorized to send the TOWS in August or the Hawks in November, and by whom? My information from the State Department is that they think they were authorized, and this of course is consistent with no action being taken against them.

4. P.7, ¶2: This paragraph says that Poindexter objected to the Hawk shipment in a discussion with an Israeli on January 2. Earlier, the chronology says that we learned of the shipment "in January" (p.6, ¶3). Did we first learn of it on January 2 or on New Year's Day? Was the matter raised at the discussions with the President on January 6 and 7? (p.7) Why not? Was it raised at the meeting of January 16? (p.9)
5. Pp. 9-10. The chronology makes reference to the furnishing of arms to the Afghanis through the Iranis. The Finding does not authorize this. Is there another Finding which covers shipments of arms to the Afghanis?
6. P.13, last ¶: Chronology states that "The U.S. side, as in the past, insisted that the release of the hostages was a pre-requisite to any progress." Is this consistent with the President's statements that the Iranis only had "influence" and not "control" over the kidnappers in Lebanon? Moreover, what does "as in the past" mean? The chronology lists numerous contacts with the Iranis but nowhere reports that these contacts involved discussion of hostages.

This leads to a general comment about the chronology. It makes repeated statements to the effect that the purpose of the operation was to open a channel to Iran, suggesting that the release of the hostages was not a major goal. This is reinforced by the fact that the chronology makes no reference to the timing of the release of Jenko or Jacobsen in relation to arms shipments to Iran.

Since the chronology was prepared on November 20, 1986, and appears to have been the basis for Casey's testimony, these elements make it appear very self-serving. The chronology may be accurate as far as it goes, but one is left with the impression that it was created to prove a point and not as an objective recitation of all the relevant facts.

11/24/86

The Chronology shows a foreign policy-making process that is out of the President's control:

1. The Israelis twice shipped arms to Iran against the President's wishes. The first time nothing was done, and it was not clear that the law was complied with, or that the President was advised of the fact that the law requires a report. The second time, it was not even clear that the President was told.
2. The Israelis claim they were authorized to sell the arms to Iran. If so, who's in charge here?
3. The chronology does not make clear whether the AG knew of the Israeli shipments at any time, and hence was given no opportunity to opine on the legal issues.
4. The President approved no notification to Congress on January 17, but the chronology does not make clear on what basis this determination was made. Was the President advised that such a step was highly unusual and would provoke an outcry in Congress when disclosed? Was he aware that the program could go on for months before disclosure would be made in "a timely manner?"
5. The chronology does not make clear that the President was ever informed after January 17 about how his policy was being carried out. Did he know that the Israelis were the intermediaries in most shipments? Was he told the operational details so that he would be able to make the political judgments that only he could make?

11/24/86

1. The President should say that although his policy was to open channels to Iran, the program was implemented without his knowledge in such a way as to suggest that he was willing to trade arms for hostages. He was not informed of many operational details and events that may have violated the law.
2. It was also a mistake not to report this program to Congress, and to permit the NSC to carry out an extended covert operation rather than its customary advisory role.
3. Finally, the secrecy of the activities of NSC, even within the Administration, left the President and his senior advisers in the dark about whether the laws had been complied with.
4. As a result, the President should ask the leadership of the NSC staff to resign and replace his National Security Adviser.
5. The President should also appoint a commission to look into the way his policy was implemented and to suggest changes in the future role of the NSC in order to assure that in the future the NSC plays only a coordinative and advisory role -- and not an operational role -- in foreign policy and national security matters. The AG, who was part of the process to begin with, should not investigate it.
6. The replacement for Poindexter should be a person with a respected reputation in the foreign policy and national security establishment. The choice must be someone who immediately evokes approval in Congress, in the media, and with our allies. Candidates:
 - Brent Scowcraft, who headed the MX study
 - Larry Eagleburger
 - Winston Lord, Chairman of Council on Foreign Relations
 - Bill Hyland
7. Whether Shultz resigns or not is not important. If James or Howard Baker replaced him, the perception would be that the President was reaching out for a consensus secretary. Weinberger would be a very bad choice.
8. Meese's role also deserves serious criticism. He was sloppy in advising the President on the legality of the operation. Even if he didn't know the facts, he didn't bother to ask.

11/26/86

1. The issue will devolve into two questions:
 - What did the President know of illegal activities and implementation steps.
 - If President did not know, the question will be his control over foreign policy process.
2. Meese investigation will not be sufficient.
 - He will be subject to challenge on his legal advice.
 - His prior investigation, before he gave his legal opinions in November/86 was non-existent.

We should ask for a special prosecutor.
3. The facts are still far from clear.
 - The diversion of funds apparently occurred in 1986, but you were initially told it occurred in November 1985 (Hawks).
 - Who authorized Hawk sale in 1985? Did President know?
 - Why did President not take action in October 1985 when TOW sale was revealed to him?
 - Facts must come out quickly before Congressional investigation and be placed in best possible context.
4. Not clear that gravity of situation is understood.
 - Yesterday's statement could have been a way for the President to step away from what was done.
 - Instead, it was reduced down to a question about one matter -- not whether he was well-served.
 - President continues to insist there was no "mistakes".
5. There is at least a chance that NSC actions -- chronology prepared by North, Poindexter's failure to inform you or President, was a cover-up.

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Issue: Did the President Approve the Israeli
Sale of U.S. Arms to Iran in July or August 1985?

1. In assisting with the preparation of a chronology of the Iran matter in November 1986, Bud McFarlane said that the President did not approve in advance, and was surprised to learn of the Israeli shipment. When the President was informed, according to McFarlane, he decided to do nothing about it, and did not agree to replenish Israeli stocks.
 2. In testimony in December 1986 and January 1987, McFarlane said the President did approve in advance, in a telephone conversation with McFarlane sometime in July or August 1985.
 3. In his testimony, McFarlane also said that the Secretary of State and the Secretary of Defense were informed "within days" of the President's decision.
 4. The Secretary of State and the Secretary of Defense deny that they were informed of the President's decision and say that they were not aware at the time that the shipments had been made.
 5. Don Regan has testified that he recalls the President not approving the arms sales in advance, and recalls that the President was surprised when he heard that the Israelis had made the shipments.
 6. Oliver North's files indicate that, as late as January 1986, the Israelis' stocks of TOW missiles had not been replenished. The Israelis had attempted to purchase the missiles from DOD, but had been unsuccessful. No effort appears to have been made to get DOD to sell the missiles to Israeli on the basis of the President's advance approval of the shipment or the President's agreement to replenish.
 7. According to North's files, the Israelis refused to ship 1000 TOWs to Iran in January 1986 because they had previously been unable to purchase TOWs that would replenish their stocks.
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FOLLOWING ARE THE TWO MAIN QUESTIONS THAT HAVE BEEN DOGGING THE PRESIDENT AND COMPILED ANSWERS BASED ON PRESIDENTIAL STATEMENTS AND ADMINISTRATION BRIEFINGS.

1) Mr. President, did you trade arms for hostages? The covering memo for the January 17, 1986, Finding makes this connection quite clearly.

No. We did not trade arms for hostages. Our policy on terrorism is quite clear and we have held to it consistently. We are willing to speak with anyone, at anytime, anywhere about the safe release of our hostages; we will not negotiate terrorist demands; and we will not pressure third parties to give in to terrorist demands.

Now, on our initiative toward Iran. I have made it clear on a number of occasions that the motivating force for our policy was to open a door to a very important country in a strategic area of the world; to bring an honorable end to the war; to bring a halt to state-supported terror in the Middle East; and, finally, to affect the safe return of all hostages from Lebanon. Let me emphasize, that we made clear that Iran must oppose all forms of international terrorism as a condition of progress in our relationship. Furthermore, Iran does not control the hostages; it has some influence over their captors. Also, the captors are seeking the release of the 17 Dawa prisoners in Kuwait and we have made it plain that we will not pressure any third party to give in to terrorist demands. It is quite clear, therefore, that there was no arms for hostages deal.

On the subject of the Finding, in no place does it state an arms for hostages deal. In the covering memo, it is quite obvious the impetus for the program was related to the strategic importance of Iran. Furthermore, in one point in the memo it is explicitly stated that any hostage release is in some respects a byproduct of this larger strategic effort.

2) Did you make a mistake in your policy?

I believe my policy has a sound basis. Obviously, the execution of those policies was flawed and mistakes were made. Let me just say it was not my intent to do business with Khomeini, to trade weapons for hostages, nor to undercut our policy of anti-terrorism.

FOLLOWING ARE QUESTIONS THE PRESIDENT CAN EXPECT TO RECEIVE AND SOME PROPOSED ANSWERS AS A GUIDE TO WHAT DIRECTION MAY BE TAKEN.

1) Are you being briefed on current developments on this issue?

I am fully aware but, as we have been saying all along, it is fruitless to engage in an exercise of reacting to every little leak, accusation, or allegation. This serves neither the public nor the investigatory bodies. What is needed is a clear and detailed picture of events. At this time this can best be obtained from the Senate Select Committee's report. I call on the Senate to release the report so that a stop can be put to this daily exercise and the full picture as known at this time can be examined by the public.

2) How can you claim to be aware of events, yet are not doing anything about what is happening? You seem to be isolated from the facts.

Let me assure you that I am deeply concerned. But there are many individuals who were involved and it is best to compile a complete picture based on everything that is known. This can best be done via the investigatory bodies now in place. And let me remind you, it was the administration that made the revelation on the fund diversions; I appointed the Tower Commission to study the NSC, I called for the appointment of an independent counsel, I appointed Ambassador Abshire as White House coordinator of the Iran inquiry, and I called upon the Congress to consolidate its mechanism for its investigations. I also called for the granting of use immunity for Vice Admiral Poindexter and Lt. Col. North. To say that I have been isolated from the facts is not consistent with the fact that it was the Attorney General and I who came to the briefing room in November to announce the funds diversion.

3) But you have been avoiding the press.

What am I doing now? I think that's unfair of you to say. There was a holiday season and, as you know, I had a hospital visit. It was natural during such times that my activities would be limited.

4) Why didn't you read the covering memo for the January 17 Finding and why did Poindexter initial for you?

I cannot read what people do not give me. I was given a verbal briefing and did not know there was a covering memo.

5) Do you believe Poindexter gave you an accurate portrayal of the memo?

There are various investigations going on. Let them proceed. I am sure Poindexter will eventually present his story. As you know I have asked for use immunity in order to facilitate this. I want the truth out, but for me to conjecture or comment on isolated episodes of events may just create more confusion.

- 6) Why did you call North a national hero?
- 7) Will you testify on the Hill?
- 8) Will you replace Don Regan?
- 9) Did you approve the September 1985 Israeli arms shipment?
- 10) Why did you flatly reject on November 6 the reports coming out of the Middle East that the U.S. had been selling arms to Iran?
- 11) Have you ever met privately with North?
- 12) When did you first learn of Israeli arms shipments? It has been common knowledge the Israelis have been selling arms to Iran for many years, yet the cover memo for the January 17 Finding states that the Israelis will commence sales. Were facts being kept from you?
- 13) Why did you have the White House not declassify the Peres letter and the Bush meeting in the Senate Committee report?
- 14) In view of the above, are you not trying to rewrite the events to your own benefit? And why did the White House have McFarlane produce a false memo to support your case?
- 15) Have you read the North chronology? If so, what does it say? If no, why not?